

No. 14-1323 PO

On October 28, 2014, the Director filed a motion for summary decision. We gave Dole until November 13, 2014, to respond to the motion. On November 14, 2014, Dole sent notice that he would not file a response.

Pursuant to 1 CSR 15-3.446(6)(A),<sup>1</sup> we may decide a motion for summary decision if a party establishes facts that entitle that party to a favorable decision and no party genuinely disputes such facts. Those facts may be established by stipulation, pleading of the adverse party, or other evidence admissible under the law.<sup>2</sup>

By failing to respond to the motion for summary decision, Dole has failed to raise a genuine issue as to the facts the Director established in his motion.<sup>3</sup>

Accordingly, the findings of fact are based on the allegations contained in the complaint, motion, and the admissible documents attached: business records authenticated by a custodian of records affidavit and certified court documents from the criminal case against Dole.

The following facts, based on this evidence, are undisputed.

### **Findings of Fact**

1. Dole was licensed as a peace officer by the Director at all relevant times.
2. On October 2, 2011, Dole operated a motor vehicle under the influence of alcohol.
3. On April 20, 2012, in the Knox County Circuit Court, Dole pled guilty to one count of driving while intoxicated,<sup>4</sup> a Class B misdemeanor.
4. The court suspended imposition of sentence and placed Dole on one year of probation with special conditions of “SATOP and S22” and to pay recoupment of \$98.00 to the Missouri State Highway Patrol.

### **Conclusions of Law**

We have jurisdiction to hear this case.<sup>5</sup> The Director has the burden of proving that Dole has

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<sup>1</sup> All references to “CSR” are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

<sup>2</sup> 1 CSR 15-3.446(6)(B).

<sup>3</sup> *Id.*

<sup>4</sup> § 577.010. Statutory references are to RSMo Supp. 2013 unless otherwise noted.

<sup>5</sup> § 590.080.2.

committed an act for which the law allows discipline.<sup>6</sup> The Director alleges that there is cause for discipline under § 590.080.1, which provides:

1. The director shall have cause to discipline any peace officer licensee who:

\* \* \*

(2) Has committed any criminal offense, whether or not a criminal charge has been filed.

Dole pled guilty to one count of driving while intoxicated and received a suspended imposition of sentence on April 20, 2012. He has admitted that he committed that offense. Therefore, he is subject to discipline under § 590.080.1(2).

#### **Summary**

Dole is subject to discipline under § 590.080.1(2). We grant the Director's motion for summary decision. The hearing presently scheduled for February 26, 2015 is canceled.

SO ORDERED on January 8, 2015.

/s/ Nicole Colbert-Botchway  
NICOLE COLBERT-BOTCHWAY  
Commissioner

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<sup>6</sup> *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).